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DOCKET FILE COPY ORIGINAL

November 22, 1993

02046.002

BY HAND

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

RE: Motion for Summary Decision
In re Applications of Martha J. Huber, et al.
for Construction Permit for a New FM Station
on Channel 234 A in New Albany, Indiana
MM Docket No. 93-51

Dear Mr. Caton:

Enclosed please find the original and six (6) copies of a Motion for Summary Decision for filing with the Commission in connection with the above-captioned matter.

If you should have any questions regarding this matter, kindly direct them to the undersigned.

Yours truly,



Marjorie R. Esman

MRE/mv
Enclosures

cc: Peter C. L. Boyce

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NOV 23 1993

Before The
Federal Communications Commission
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Applications of) MM Docket No. 93-51
)
MARTHA J. HUBER, et al.,)
)
For Construction Permit for a)
New FM Station on Channel 234A)
in New Albany, Indiana)

MOTION FOR SUMMARY DECISION

Midamerica Electronics Service, Inc. ("Midamerica"), through counsel, moves for summary decision in its favor concerning its financial qualifications on the following grounds:¹

I. MIDAMERICA'S ORIGINAL BUDGET WAS ACCURATE AND ADEQUATE

Midamerica is a corporation solely owned and operated by Peter C.L. Boyce, who is its sole director and its President. Midamerica has a second officer, Larry Young, in compliance with Mr. Boyce's understanding of the requirements of Indiana law.² Midamerica has always been under the sole control of Mr. Boyce, who keeps close track of all of the corporation's activities.

¹Midamerica's application is being amended to substitute a new entity called New Albany Broadcasting Co., Inc. The financial qualifications of that entity are addressed in Section III below.

²All factual statements in this Motion, unless otherwise indicated, are supported by the attached Declarations of Peter Boyce and Larry Young and by the attached transcripts of their depositions. Those depositions were taken under adversarial conditions after the financial issue was added against Midamerica.

As Mr. Boyce's Declaration shows, before Midamerica filed its application Mr. Boyce, an experienced broadcast engineer whose existing business is devoted exclusively to the installation and maintenance of equipment at broadcast stations, drew up a list of necessary equipment and an estimate of the costs involved in acquiring that equipment. Because of the nature of Midamerica's business, it already had on hand much of the equipment Mr. Boyce needed to construct the facility. Midamerica also owns a building with space suitable for use as a studio, and does not need to acquire or rent studio space. Because Midamerica is in the business of installing and maintaining broadcast equipment, it would not need to pay for those services as another applicant might have to do. Consequently, Mr. Boyce's budget estimate covered only the equipment and services Midamerica would need to buy, in addition to the costs of operation for three months without revenue. For that, his budget shows a total of 85,000.00.

As the Declaration shows, Mr. Boyce is always fully aware of his own financial position as well as that of Midamerica. He knew before his application was filed that Midamerica had the resources necessary to meet the budget estimates, and that it would not need to rely on other sources of funding. Nonetheless, out of an abundance of caution Mr. Boyce determined that he would use his own personal assets (as opposed to those of his corporation) if necessary. Also out of an abundance of caution he asked Larry Young, Midamerica's corporate secretary and a long-time friend, to commit some of his personal resources in the event that they might be needed.

Midamerica's budget, as submitted with its application, was entirely reasonable under the circumstances. The Commission does not require applicants to estimate the value of equipment and services needed to construct a station; it merely ask an applicant

to estimate the cost, to that applicant, of whatever the applicant deems is needed.

Specifically, Section III, Question 2 of FCC Form 301 reads as follows:

State the total funds you estimate are necessary to construct and operate the requested facility for three months without revenue.

If an applicant does not need funds for a particular purpose, there is no requirement that the value be included.

It is undisputed that Midamerica is uniquely situated in that it already has on hand much of the equipment, and most of the services, needed to construct a station such as the one proposed. That the equipment and the services have a market value to others does not mean that they have a commensurate cost to Midamerica. As only the estimated funds needed must be listed in the budget, Midamerica did not budget the value of the equipment and services it had on hand, which were available to it at no cost whatever. If its submitted budget estimate is lower than that of other applicants, it is lower because Midamerica does not need to purchase as much as the others.

The facts as established in the Declaration of Peter Boyce show clearly that Midamerica was fully aware of the legitimate costs it would incur in the construction and initial operation of its proposed station, and budgeted for those costs in an appropriate manner. The budget submitted is adequate. The Commission has recognized that where cost estimates are not unreasonable on their face in the light of the applicant's explanations, the estimates will be accepted without designation of an issue. Viking Television, Inc., 16 RR2d 123 (Rev. Bd. 1969); California Stereo, Inc., 30 FCC 2d 401

(Rev. Bd. 1973). Midamerica is entitled to the presumption that its estimates are sufficient in the light of its explanations.

II. MIDAMERICA HAD THE REQUISITE FUNDS AVAILABLE WHEN IT FILED ITS APPLICATION

As Mr. Boyce indicates in his Declaration, he was fully aware of the financial positions of both himself and Midamerica when he filed the application. While Midamerica had the resources to fund the proposed station, in cash, real estate, and accounts receivable, Mr. Boyce committed to pledge his own personal assets as necessary. The application specifies only liquid reserves of Midamerica and of Mr. Boyce rather than other non-liquid assets, because Mr. Boyce believed that it was easier to specify liquid reserves than to explain the possible need to liquidate other assets. Nonetheless, Midamerica has always had the ability to fund the entire application on its own, without relying on Mr. Boyce, Mr. Young, or any other person or entity.

The Declarations of Mr. Boyce and Mr. Young, as well as their deposition testimony, establish that they have been friends for a long time and are very familiar with each other's financial conditions and other aspects of each other's lives. They share information freely on all subjects. They have engaged in undocumented loan transactions in the past, when Mr. Boyce lent Mr. Young several thousand dollars for a business venture. In that instance, while there was no written loan agreement, the funds were repaid, with interest, as agreed. The testimony shows that both men understood that Mr. Young's commitment to pledge \$25,00.00 of his own money to Midamerica, if needed,

was a similar commitment for which no writing was necessary. There was no need for Mr. Boyce or Midamerica to review Mr. Young's financial statement before signing the application for two reasons: one, Midamerica did not need Mr. Young's contribution; and two, Mr. Boyce was very familiar with Mr. Young's financial position.

The Commission has acknowledged that the pledge of funds between close friends who are familiar with one another's financial positions and who have done business together in the past need not be preceded by a review of a financial statement. Northampton Media Associates, 4 FCC Rcd. 5517 (1989), aff'd, 941 F2d 1214 (D.C. Cir. 1991). As long as the funds are in fact available, and as long as the applicant has a legitimate basis for knowing that the funds are there based on a long-term personal relationship with the proposed lender, the failure to review a balance sheet is of no consequence.

The facts here fall squarely within the Commission's ruling in Northampton; in fact they are stronger. A close friend pledged a loan of funds which the applicant knows are available. While in Northampton the applicant was dependent on the funds pledged, Midamerica is not. Mr. Boyce, the principal of Midamerica, has been involved in similar undocumented loan transactions with Mr. Young, whereas there was no evidence that the applicant in Northampton had had such prior dealings with its lender. Under the circumstances, there is no question that, under the Commission's precedent in place at the time Midamerica's application was filed, Midamerica had reasonable assurance of the availability of the needed funds and was financially qualified.

III. NEW ALBANY BROADCASTING COMPANY, INC. IS FINANCIALLY QUALIFIED


Simultaneously with the filing of this Motion, Midamerica is filing an Amendment to its Application to Substitute New Albany Broadcasting Company, Inc. ("NABC") as the applicant. NABC was formed as a result of a settlement among the parties, and constitutes a merger of Martha J. Huber and Midamerica. The financial qualifications of NABC are set forth in the Amendment and are not disputed.³

The undisputed Amendment, which shows NABC's financial qualifications, is sufficient to show that NABC is financially qualified, and was at its formation, to build and operate the proposed station for three months.

IV. CONCLUSION

In view of the above, Midamerica submits that the financial qualifications issued against it should be resolved in its favor.

Respectfully submitted,



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MARJORIE R. ESMAN- #18198
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Metairie, Louisiana 70005
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³The budget for NABC shows an estimated cost of construction and three months operation of \$197,000.00. This is larger than the sum originally budgeted by Midamerica because NABC has determined to purchase more expensive equipment than that presently owned by Midamerica, and because NABC is proposing to move to a new transmitter site.

CERTIFICATE OF SERVICE

I, Mary Vance, a secretary in the law firm of Hardy and Carey, hereby certify that I have served a copy of the above and foregoing document, this 22nd day of November, 1993, on the following:


Honorable Richard Sippel*
Judge
Federal Communications Commission
2000 L Street, N.W., Room 214
Washington, D.C. 20554

James Shook, Esq.*
Federal Communications Commission
Hearing Branch
2025 M Street, N.W., Room 7212
Washington, D.C. 20554

Morton L. Berfield, Esq.
Cohen & Berfield
1129 20th Street, N.W.
Washington, D.C. 20036
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Henry A. Solomon, Esq.
Haley, Bader & Potts
4350 N. Fairfax Drive, Suite 900
Arlington, VA 22203-1633
Counsel for Rita Reyna Brent

Donald J. Evans, Esq.
McFadden, Evans & Sill
1627 Eye Street, N.W., Suite 810
Washington, D.C. 20006
Counsel for Staton Communications, Inc.


Mary Vance

* By Hand

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Before The
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In re Applications of)	MM Docket No. 93-51
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SECOND DECLARATION OF PETER C.L. BOYCE

I, Peter C.L. Boyce, under penalty of perjury, declare as follows:

1. I am President and Treasurer of Midamerica Electronics Service, Inc. ("Midamerica"). I own all of the stock in Midamerica and devote substantially all of my time to its business affairs. Its office address is 410 Mt. Tabor Road, New Albany, Indiana. I am fully aware of its business affairs.
2. The principal business of Midamerica is the installation and maintenance of equipment at broadcast stations. To serve its clients better than would otherwise be possible, Midamerica has established dealer relationships with certain select equipment manufacturers, including Nautel (a manufacturer of solid state transmitters) and Motorola. In certain transactions, Midamerica has accepted used equipment on a trade-in basis.

3. Prior to forming Midamerica, I was employed as an engineer and chief engineer at various broadcast stations in the New Albany / Louisville area and served as a consultant to others.

4. I personally prepared Midamerica's Application for a Construction Permit to build a new FM station at New Albany, Indiana. Prior to completing the application, I determined what equipment Midamerica would need to build the station, what it already had on hand, and the cost of obtaining the rest. Since Midamerica and I are in the business of building broadcast facilities and remodelling them, and since Midamerica is a dealer for certain manufacturers, estimating the cost of construction of the station was not the major task that it would be for someone who had never built a station. I did not include a budget category for installation services, as another applicant might have to do, because Midamerica and I were going to perform those services ourselves. Then, considering the programming I had in mind, I estimated the cost of running the station for three months without revenue.

5. Midamerica has a part-time employee who, among other things, keeps Midamerica's books, on computer. Midamerica also uses an outside accounting firm for certain accounting functions.

6. I keep regular track of the financial condition of Midamerica. Anytime I need information, either specific or general, I only need review the computerized information or the information from our accounting firm. .

7. After the financial qualifications issue was added against Midamerica, I retrieved the budget for station construction and initial operation that I had prepared prior to signing the application.

8. I also retrieved my personal financial statements and those of Midamerica, as of November 1, 1991 and as of May, 1993, the then most recent month. These financial statements, and several hundred pages of supporting materials, were provided to the competing applicants in response to motions for the production of documents related to the financial qualifications issue that was added with respect to Midamerica's application.

9. At the time I certified Midamerica's application I committed, and at all times since then, I have remained committed, to providing to Midamerica such of my personal funds and or assets as might be necessary for it to build and operate its proposed station.

10. My personal balance statement as November 1, 1991 shows a net worth of \$1,051,803, of which \$495,000 is the value of Midamerica, at "book" valuation.

11. As of November 1, 1991, there was more than \$75,000 in cash and readily tradable securities (valued at market price) in my personal accounts and those of Midamerica.

12. As of November 1, 1991, Midamerica held accounts receivable of \$368,831.04.

13. I own a building at 410 Mt. Tabor Road, New Albany, which is within the New Albany Industrial park. The building serves as Midamerica's office. Midamerica's employees report to work there and have offices there, as do I. (I also live in the building). The building is valued at \$150,000, against which I have a mortgage balance of \$14,000. Thus, I have over \$130,000 equity in the facility.

14. I also own several vehicles, including a customized private coach (bus) which was Mohammed Ali's private coach, an airplane and a boat.

15. At the time Midamerica applied for the New Albany, Indiana construction permit, I owned 50% of the outstanding stock of Southeast Indiana Radio, Inc., the licensee of stations WOCH AM and FM, North Vernon, Indiana. The AM station is a 1,000 watt daytimer. The FM station is a 50,000 watt Class B station with wide area coverage.

16. Southeast Indiana Radio, Inc. had been considering selling its stations at the time Midamerica applied for the New Albany permit. In view of the discussions with potential purchasers, I valued my interest in the company at \$250,000. From the discussions we had held regarding the sale of the stations, the liquidity of the stations was clearly established. My balance sheet as of November 1, 1991 includes a valuation of \$250,000 for my interest in Southeast Indiana Radio, Inc. Even in a forced sale, I could have readily realized more from the liquidation of my interest in the stations than I would need to build the New Albany station.

7. After the financial qualifications issue was added against Midamerica, I retrieved the budget for station construction and initial operation that I had prepared prior to signing the application.

8. I also retrieved my personal financial statements and those of Midamerica, as of November 1, 1991 and as of May, 1993, the then most recent month. These financial statements, and several hundred pages of supporting materials, were provided to the competing applicants in response to motions for the production of documents related to the financial qualifications issue that was added with respect to Midamerica's application.

9. At the time I certified Midamerica's application I committed, and at all times since then, I have remained committed, to providing to Midamerica such of my personal funds and or assets as might be necessary for it to build and operate its proposed station.

10. My personal balance statement as November 1, 1991 shows a net worth of \$1,051,803, of which \$495,000 is the value of Midamerica, at "book" valuation.

11. As of November 1, 1991, there was more than \$75,000 in cash and readily tradable securities (valued at market price) in my personal accounts and those of Midamerica.

12. As of November 1, 1991, Midamerica held accounts receivable of \$368,831.04.

17. Southeast Indiana Radio, Inc. has in fact sold its stations. Southeast Indiana Radio, Inc. received a promissory note, on which payments are being made by the purchaser. Southeast is also continuing to collect accounts receivable from when it owned the stations. As of April 30, 1993, the Cash Management Account for Southeast Indiana Radio, Inc. was valued at \$271,294.67. I am entitled to half of this amount and could withdraw it if, and as, needed. This amount will continue to grow as more of the pre-sale accounts receivable of the stations are collected and as payments are received on the note due.

18. At the time I prepared Midamerica's application, I knew that Midamerica and I had more than \$75,000 in cash and cash equivalent in the form of immediately marketable securities (at market price). Moreover, I was prepared to liquidate such of my assets, and / or those of Midamerica, as it might be necessary to liquidate to fund the construction and initial operation of the New Albany station. I knew, therefore, that without any outside help, I could easily meet the estimated cash requirements of \$85,000 for construction and initial operation of the New Albany station.

19. Larry Young and I are long-time friends. It is my understanding that Indiana law requires that there be two officers of a corporation. When I had Midamerica incorporated, I asked Larry to serve as Corporate Secretary, a position he continues to hold. Larry and I have always discussed our respective business affairs and personal matters openly with each other. Larry is familiar with my

finances and those of Midamerica, and I am familiar with his. We often discuss investment opportunities one of us has received. I value his advice, and believe that he values mine.

20. In the past, when Larry was starting a new business venture, I lent him \$10,000. This minimized the impact of the new business on Larry's liquidity. There was no documentation of the loan other than our checks, to the best of my recollection. Later, Larry repaid the funds with interest, although I do not recall a rate of interest being set in advance. (In response to requests for documents in this proceeding, Larry's check to me was retrieved and copies provided to other parties).

21. In the course of our normal conversations, I discussed the application that I was considering filing for New Albany with Larry several times. Larry offered to lend funds for the construction and operation of the station if necessary, should Midamerica be the successful applicant.

22. Broadcasting and broadcast maintenance constitute my entire professional and business life. Over the many years that I have been involved in broadcasting, I have developed an understanding that the Commission expects honesty from its licensees and applicants.

23. I firmly believed (and do now believe) that Midamerica was financially qualified by itself, even without my personal resources, which I had additionally committed. I pledged my personal liquid resources, and listed only the liquid

resources of Midamerica because I thought it would be easier that way. There was no doubt in my mind that Midamerica, with the commitment of my personal resources, was financially qualified. Nonetheless, out of an abundance of caution, so that there would be no doubt that Midamerica is (and was at the time I signed its application), financially qualified, I accepted Larry Young's offer to loan \$25,000 for the construction and initial operation of Midamerica's station should it be needed.

24. Based on our long years of friendship, and many discussions of investments, I was aware of Larry's financial situation. I knew that he had sufficient net liquid assets to make the loan, if Midamerica needed it. In response to a motion for the production of documents, earlier this year Larry printed from his computerized record a balance sheet reflecting his financial position as of November 1, 1991. It is written confirmation of what I knew when I signed the application, that Larry's investments (listed as totaling \$125,236.03, including over \$45,000 in one investment account alone) would readily yield the \$25,000 cash. To the best of my knowledge, Larry has no liabilities. Additionally, he has other assets, including a home, another piece of property, in excess of \$64,000 in a retirement plan, and vehicles.

25. The \$25,000 that Larry was willing and able to lend, coupled with the \$75,000 in cash and cash equivalents Midamerica (and I) had available meant that

without liquidating anything (other than regularly traded securities at market price), Midamerica had available to it \$100,000 cash if needed.

26. As I was preparing the application, Larry reviewed it several times. He knew that I had listed him as a source of funds, prior to my execution of the application.

27. Also prior to signing Midamerica's application, I prepared a budget for the station's construction and initial operation. As part of the budget process, I listed the items needed for a station and either entered what it would cost or that the item was on hand. For the studio, Midamerica had (and has) on hand the following items:

- a. Mixing console
- b. 2 turn tables and pre-amplifiers
- c. 4 track reel - reel tape deck
- d. 2 track reel - reel tape deck
- e. mono reel - reel tape deck
- f. (2) tape cart machines
- g. EBB Encoder/Decoder
- h. Standby Power Generator
- i. Satellite Dish

28. For the transmitter site Midamerica had (and has) on hand:
- a. Tower and guy wires
 - b. FM transmitter
 - c. Feed line and Fittings
 - d. Standby power generator and auto - transfer switch
 - e. Audio processing equipment
29. To interconnect the studio and transmitter, Midamerica had (and has) on hand a stereo studio to transmitter link.
30. I planned to buy:
- a. an antenna (\$6,000)
 - b. a transmitter "shack" (\$4,000 installed)
31. Other items in the budget included:
- a. Electric installation (\$1,000)
 - b. Fitting up part of the existing Midamerica offices to be a studio and wiring at studio (\$2,500)
 - c. F.C.C. filing fees (\$10,000)
 - d. Legal fees (\$15,000)
 - e. Taxes & Insurance (\$5,000)
 - f. Programming fees (3 months @ \$500 = \$1,500)
 - g. Staff wages (3 months @ \$10,000 = \$30,000)
 - h. Miscellaneous \$5,000
 - i. Outside engineering \$5,000.00

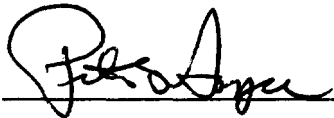
32. With or without Larry's commitment to lend \$25,000 for the New Albany project, I knew at the time I signed the application that I had more than enough immediately available funds to construct the station and operate it for three months without revenue. I also knew that I could readily raise at least another \$500,000 from liquidating (or mortgaging) other holdings, should I need it.

33. Shortly after Midamerica's Notice of Appearance was filed, it faced motions to enlarge the issues, ultimately resulting in the addition of the financial qualifications issue. Question 2 of Section III of F.C.C. form 301 asks the applicant to "[s]tate the total funds you estimate are necessary to construct and operate the requested facility for three months without revenue." I had answered "\$85,000" consistent with my budgetary estimate. I did not consider the question to ask whether the applicant already had some equipment on hand or a studio site and building that would reduce the amount of "funds" needed below that which would be needed by an applicant with nothing on hand and no experience. In hindsight, I believe that, although not requested by the application, I would have been well advised to include a notation that most of the necessary equipment was already on hand.

34. In sum, Larry Young and I are long-term, close friends. We often discuss investment possibilities. When Larry offered to lend funds for the New Albany station, it was not necessary for me to review his financial documents because I already knew his financial situation. We have done business together without

documentation before, including loans of money which has always been repaid.

In any event, Midamerica has always been able to finance the construction and initial operation of its proposed New Albany station with its own resources, supplemented if needed, with my personal resources.

Signed: 

this 17 day, November 1993.

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**Before The
Federal Communications Commission
Washington, D.C. 20554**

In re Applications of)	MM Docket No. 93-51
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MARTHA J. HUBER, et al.,)	
)	
For Construction Permit for a)	
New FM Station on Channel 234A)	
in New Albany, Indiana)	

DECLARATION OF LARRY ALAN YOUNG

I, Larry Alan Young, under penalty of perjury, declare as follows:

1. I am the Corporate Secretary for Midamerica Electronics Service, Inc., and have held that position since the corporation's inception in the late 1970's. I am not and have never been a stockholder or a director in Midamerica. I became Corporate Secretary when Peter C. L. Boyce, the sole stockholder and President, asked me to.

2. Mr. Boyce and I are personal friends but, other than my serving as Secretary of Midamerica, we have no other business interests together. I have never had any discussions with Mr. Boyce about my becoming a part owner in Midamerica and I have never expressed any interest in owning stock in Midamerica.

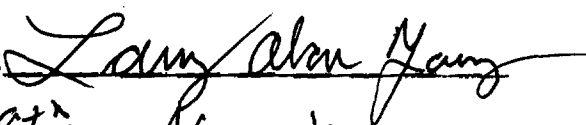
3. Several years ago Peter Boyce told me that he, through Midamerica, planned to file an application for new FM station in New Albany. I looked over the application with him before it was filed but I did not in any way assist in its preparation.

4. I agreed to provide funds as a loan to Midamerica for the New Albany station if Midamerica wins. The terms of the loan have not been reduced to writing. At one occasion in the past, Mr. Boyce lent me money for a business venture, which was also undocumented.

5. At the time that Mr. Boyce and I discussed my loan to Midamerica for the FM application, we discussed general terms of repayment. I was at that time very aware of my own financial situation and knew that I could easily provide the committed funds if needed.

6. I have always been willing and able to lend Midamerica the money I agreed to lend, should Midamerica need it. Peter Boyce is a long-time friend and he and I have discussed our financial situations many times over a period of years. I knew that he knew I had the ability to provide the money I committed, and it never occurred to me that he might need to see my financial statements because I knew he knew what my financial status was.

7. At this date I remain willing and able to lend the necessary funds, as I have committed, to Midamerica should it be necessary for the FM application.

Signed: 
this 18th day, November 1993.

BEFORE THE FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554
FCC 93M-247 31482

In re Applications of) MM DOCKET NO. 93-51
MARTHA J. HUBER) FILE NO. BPH-911114ME
RITA REYNA BRENT) FILE NO. BPH-911115MC
MIDAMERICA ELECTRONICS SERVICE,)
INC.) FILE BPH911115ML
STATION COMMUNICATIONS, INC.) FILE NO. BPH-911115MU
For Construction Permit for a)
New FM Station on Channel 234A)
in New Albany, Indiana)

DEPONENT: Peter Boyce
DATE: May 26, 1993
REPORTER: Kitty Karem

COULTER, KAREM & McBRIDE

COURT REPORTERS

765 Starks Building

Louisville, Kentucky 40202

(502) 582-1627

I N D E X

Examination by Mr. Berfield - Page 4
Examination by Mr. Solomon - Page 24
Examination by Mr. Carey - Page 50
Examination by Mr. Solomon - Page 54
Examination by Mr. Berfield - Page 57

APPEARANCES:

For Martha J. Huber

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For Rita Reyna Brent

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For MidAmerica

Bradford D. Carey
Hardy and Carey
111 Veterans Boulevard, Suite 255
Metairie, Louisiana 70005

ALSO PRESENT: Martha J. Huber
Rita Reyna Brent
